

Remarks

Claims 1-4, 6-11, 13-20, 22-27, 29-35, 37-42, 44 and 45 are pending in the application. All claims stand rejected. Independent claims are amended herein commensurate with the scope of the disclosure.

Claim Rejections

All pending claims stand rejected under 35 USC § 101 because the claimed invention is directed to non-statutory subject matter. In order to advance prosecution, independent claims 1, 16, and 31 have been amended to recite: "integrating and storing the adaptably weighted authenticating biometric value into an authenticating template stored in electronic form in a computerized device." Support is found for storing a biometric value in paragraph [0056] and throughout the pending application.

"In determining whether the claim is for a 'practical application,' the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather that the final result achieved by the claimed invention is 'useful, tangible, and concrete.'" Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, Official Gazette (Nov. 22, 2005), page 20. By "concrete" is meant "repeatable or reproducible or predictable;" by "tangible" is meant "beneficial;" and by "useful" is meant "specific and substantial and credible." Interim Guidelines, pages 20-22. "In determining whether the claim is for a 'practical application,' the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather that the final result achieved by the claimed invention is 'useful, tangible, and concrete.'" Interim Guidelines, page 20.

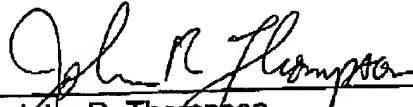
As claimed, the final result is an adaptably weighted authenticating biometric value integrated into an authenticating template. The template is used for comparison to measured waveforms to improve authentication. The improved template is beneficial as it provides superior authentication. The template is specific, substantial, and credible. As disclosed in the specification, generating an updated template is repeatable as the method is for "ongoing calibration or self-calibration." Paragraph [0059]. The claimed method of calibration occurs seamlessly without direct user involvement. "Self-calibration allows the calibrated, authenticating heartbeat signal or waveform to be modified to coincide with the changes in the user's physiological and anatomical attributes over time." Paragraph [0059]. Thus, the result of integrating a biometric value into an authenticating template is useful, tangible, and concrete.

Claim 31 is also in a well recognized patent-eligible form drawn to a "computer readable medium." See In re Beauregard, 53 F.3d 1583 (Fed. Cir. 1995) ("The Commissioner now states 'that computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101 and must be examined under 35 U.S.C. §§ 102 and 103.'"); see also Eolas Technologies Inc. v. Microsoft Corp., 399 F.3d 1330-31 (Fed. Cir. 2005) (involving a claim drawn to "a computer program product . . . comprising: a computer usable medium having computer readable program code physically embodied therein"); see also Interim Guidelines ("When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium

and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.").

Based on the foregoing, the Applicants respectfully submits that claims 1-4, 6-11, 13-20, 22-27, 29-35, 37-42, 44 and 45 are in condition for allowance. Reconsideration and early allowance of all pending claims herein is respectfully requested.

Respectfully submitted,

By 
John R. Thompson
Registration No. 40,842

STOEL RIVES LLP
One Utah Center Suite 1100
201 S Main Street
Salt Lake City, UT 84111-4904
Telephone: (801) 328-3131
Facsimile: (801) 578-6999